

MACA Nos 2476, 2481 &
2483 of 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 18TH DAY OF JANUARY 2022 / 28TH POUSHA, 1943

MACA NO. 2476 OF 2008

AGAINST THE ORDER/JUDGMENT IN OPMV 1055/2002 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL , THALASSERY

APPELLANT/S:

- 1 P.O.MEERA, W/O LATE M.C.MADHAVAN AGED 43, GEETHALAYALM,
P.O.PORORA, MATTANNUR VIA.
- 2 SMITHA MADHAVAN ,DO.LATE M.C.MADHAVAN,AGED 22....DO....

BY ADVS.
SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA
SRI.GOPAKUMAR G. ALUVA

RESPONDENT/S:

- 1 ANANDA P.NAIK, S/O.POKKA, VANDIGA P.O,NEAR CJC COLLEGE
ANKOLA, KARNATAKA STATE.
- 2 LAKSHMAN MUKUND GOANKAR, AGED 46 YEARS,HANUMATTA , P.O.
VANDIGE, ANKOLA, KARNATAKA.
- 3 NATIONAL INSURANCE CO LTD BRANCH,OFFICE, KARWAR NORTH
KARNATAKA.
- 4 THE NEW INDIA ASSURANCE CO. LTD,BRANCH OFFICE, KIRAN
CHAMBERS, RING ROAD,, SURAT, BRANCH OFFICE, KARWAR.
- 5 M.C.PARAMESWARAN NAMBIAR,S/O.PARAMESWARAN NAMBOODIRI,
GEETHALAYALM P.O., , PORORA, MATTANNUR VIA.
- 6 VIJAYA POKKA NAIK,W/O. POKKA, NEAR BUS DEPOT, VANDIGE POST,
ANKILA, U.K., KARNATAKA STATE
- 7 SANDEEP POKKA NAIR,S/O. POKKA, NEAR BUS DEPOT, VANDIGE POST,
ANKILA, U.K., KARNATAKA STATE, (ADDL RESPONDENTS 6 AND 7 ARE
IMPLEADED AS PER ORDER DATED 27/9/2021 IN IA 2503/2015 IN
MACA 2476/2008)

BY ADVS.
SRI.RAJAN P.KALIYATH -R3
SRI.P.G.GANAPPAN - R4
SMT.RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
18.01.2022 ALONG WITH MACA NOS 2481 AND 2483 OF 2008, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

MACA Nos 2476, 2481 &
2483 of 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 18TH DAY OF JANUARY 2022 / 28TH POUSHA, 1943

MACA NO. 2481 OF 2008

AGAINST THE ORDER/JUDGMENT IN OPMV 1056/2002 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL , THALASSERY

APPELLANT/S:

- 1 P.O.MEERA ,AGED 43 YEARS ,W/O LATE M.C.MADHAVAN
GEETHALAYALM P.O. , PORORA , , MATTANNUR VIA.
- 2 SMITHA MADHAVAN ,D/O. LATE M.C.MADHAVAN AGED 22 , DO....DO...

BY ADVS.
SRI .K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA
SRI.GOPAKUMAR G. ALUVA

RESPONDENT/S:

- 1 ANANDA P. NAIK ,S/O POKKA ,VANDIGA P.O. , NEAR CJC COLLEGE
ANKOLA , , KARNATAKA STATE (DIED)
- 2 LAKSHMAN MUKUND GOANKAR , 46 YEARS ,HANUMATTA , P.O.VANDIGE ,
ANKOLA , KARNATAKA.
- 3 NATIONAL INSURANCE CO.LTD BRANCH OFFICE
KARWAR NORTH KARNATAKA.
- 4 THE NEW INDIA ASSURANCE CO.LTD , BRANCH,OFFICE , KIRAN
CHAMBERS , RING ROAD , SURAT , BRANCH OFFICE , KARWAR.
- 5 M.C.PARAMESWARAN NAMBIAR ,S/O. PARAMESWARAN NAMBOODIRI
GEETHALAYALM PO , PORORA , MATTANNUR VIA.
- 6 VIJAYA POKKA NAIK ,W/O. POKKA ,NEAR BUS DEPOT , VANDIGE POST ,
ANKILA , U.K. , KARNATAKA STATE
- 7 SANDEEP POKKA NAIR ,S/O. POKKA ,NEAR BUS DEPOT , VANDIGE POST ,
ANKILA , U.K. , KARNATAKA STATE , (ADDL RESPONDENTS 6 And 7 ARE
IMPLEADED AS PER ORDER DATED 27/9/2021 IN IA 2660/2015 IN
MACA 2481/2008)

SRI.RAJAN P.KALIYATH -R3
SRI.P.G.GANAPPAN - R4

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
18.01.2022 ALONG WITH MACA Nos 2476 AND 2483 OF 2008 , THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

MACA Nos 2476, 2481 &
2483 of 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 18TH DAY OF JANUARY 2022 / 28TH POUSHA, 1943

MACA NO. 2483 OF 2008

AGAINST THE ORDER/JUDGMENT IN OPMV 1057/2002 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL , THALASSERY

APPELLANT/S:

P.O.MEERA,AGED 43 YEARS ,W/O LATE M.C MADHAVAN,
GEETHALAYALM P.O.PORORA, MATTANNUR VIA.

BY ADVS.

SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA
SRI.GOPAKUMAR G. ALUVA

RESPONDENT/S:

1 ANANDA P.NAIK,S/O POKKA, VANDIGA P.O,
NEAR CJC COLLEGE ANKOLA, KARNATAKA STATE.

2 LAKSHMAN MUKUND GOANKAR, 46 YEARS
HANUMATTA.P.O, VANDIGE, ANKOLA, KARNATAKA.

3 NATIONAL INSURANCE CO.LTD, BRANCH OFFICE
KARWAR NORTH KARNATAKA.

4 THE NEW INDIA ASSURANCE CO.LTD.BRANCH
OFFICE, KIRAN CHAMBERS, RING ROAD, SURAT,, BRANCH OFFICE,
KARWAR.

Addl Res 5 VIJAYA POKKA NAIK,W/O. POKKA,NEAR BUS DEPOT, VANDIGE
POST,ANKILA, U.K., KARNATAKA STATE

Addl Res 6 SANDEEP POKKA NAIR,S/O. POKKA,NEAR BUS DEPOT, VANDIGE POST,
ANKILA, U.K., KARNATAKA STATE,(ADDL RESPONDENTS 5 AND 6 ARE
IMPLEADED AS PER ORDER DATED 18.1.2022 IN IA 2505/2015 IN
MACA 2483/2008)

BY ADV SRI.RAJAN P.KALIYATH -R3

BY ADV.P.G.GANAPPAN - R4

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
18.01.2022 ALONG WITH MACA NOS 2476 AND 2481 OF 2008, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

“ CR ”

C.S.DIAS.J.,=====
MACA Nos 2476, 2481 and 2483 of 2008=====
Dated this the 18. day of January, 2022.**JUDGMENT**

As the appeals arise out of the common award in O.P (MV) Nos.1055, 1056, and 1057 of 2002 of the Motor Accidents Claims Tribunal, Thalassery (in short 'Tribunal'), they are being decided together. The parties are, wherever the context so requires and for the sake of convenience, referred to as per their status in O.P (MV) 1056/2002.

Factual Matrix

2. The compendious background facts are: Madhavan, his wife – Meera and their two daughters Latha and Smitha were residents of Gujarat. They decided to relocate to their native place at Mattannur in

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Kannur District. The four of them left from Gujarat to Mattannur in a Car driven by Madhavan. Little did they know it was their last journey together! On 8.7.2001, at about 6.45 p.m., while the car was manoeuvring a steep gradient at Nagar Cross, Kumta Taluk, Karnataka State, a van which was moving downhill, from Ankola to Kumta, driven by the first respondent in a negligent manner and at excessive speed, collided with the car. Madhavan and Latha suffered fatal injuries and breathed their last before they reached the Kumta Taluk Hospital. The car got extensively damaged. Fortuitously, Meera and Smitha survived unscathed.

3. In the above state of affairs, Meera, Smitha and the mother of Madhavan – Janaki (hereinafter referred to as 'petitioners') filed O.P (MV) Nos.1056 and 1055 of 2002 before the Tribunal, against the driver, owner, insurer of the van and the insurer of the car (hereinafter referred to as 'respondents'), seeking compensation for the death of Madhavan and for the damages caused to the car. Meera also filed O.P (MV) No.1057 of 2002

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against the respondents, seeking compensation for the death of her daughter Latha.

O.P (MV) No.1056 of 2002 (MACA No.2481 of 2008)

4. The petitioners have filed the claim petition against the respondents, seeking an amount of Rs.29,20,000/- as compensation for the death of Madhavan. They have, *inter-alia*, pleaded that Madhavan was aged 50 years at the time of the accident/death. He was a healthy and able bodied person. He was an Engineer by profession and was earning a monthly income of Rs.25,000/-. The appellants were the dependents of the deceased. They have no independent income of their own. The accident happened due to the rash and negligent driving of the van by the first respondent. The van bearing registration No.KA.30/630 was owned by the second respondent and insured with the third respondent. The car was insured with the fourth respondent. The respondents were jointly and

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severally liable to pay the petitioners the compensation amount.

O.P (MV) No. 1055 of 2002 (MACA No.2476 of 2008)

5. The petitioners have filed the claim petition against the respondents, reiterating the same pleadings in O.P. (MV) No.1056 of 2002, claiming an amount of Rs.60,000/- as damages caused to the Maruthi car bearing registration No.GBT/9744 belonging to Madhavan.

O.P (MV) No.1057 of 2002 (MACA No.2483 of 2008)

6. The second petitioner – Meera has filed the claim petition against the respondents, on the same pleading as in O.P (MV) 1056 of 2002, claiming an amount of Rs.3,00,000/- as compensation for the death of Latha, who was a 17 year old student.

Defence of the respondents

7. The respondents 1 and 2 have not contested any of the claim petitions and have been set ex parte.

8. The third respondent – the insurer of the van – has filed separate counter statements in three claim petitions. The third respondent has contended that the accident occurred due to the negligence of Madhavan, who attempted to overtake a rickshaw while moving uphill and the car collided against the van. There was no negligence on the part of the first respondent; therefore, the third respondent is not liable to pay the compensation.

9. The fourth respondent – insurer of the car – has also filed separate written statements in the claim petitions stating that as the car was covered only by an 'Act Policy', the fourth respondent is to be totally exonerated.

10. The Tribunal consolidated and jointly tried the three claim petitions.

Evidence

11. The petitioners 2 and 3 and the Surveyor who prepared Ext.A21 survey report were examined as PWs 1 to 3, and Exts.A1 to A25 were marked through them in

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evidence. The third respondent had produced the charge-sheet laid by the Police, which was marked as Ext. B1. The fourth respondent produced the insurance policy of the car, which was marked as Ext.B2.

Common Award

12. The Tribunal, by the impugned common award, allowed the three claim petitions, in part, but found that Madhavan had also contributed to the accident. Consequentially, 50% of the compensation amount awarded in the three claim petitions has been deducted. Accordingly, the petitioners are permitted to recover from the third respondent an amount of Rs.4,60,000/- in O.P (MV) No.1056/2002, as compensation for the death of Madhavan; Rs.95,000/- in O.P(MV) No.1057/2002, as compensation for the death of Latha; and Rs.24,000/- in O.P (MV) 1055/2002, as damages for the car.

13. Aggrieved by the finding of contributory negligence attributed against Madhavan and dissatisfied with the quantum of compensation awarded in the three claim petitions, the petitioners 2 and 3 have filed MACA

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Nos. 2476/2008 and 2481/2008, and the second petitioner has filed MACA 2483/2008.

14. After the passing of the award, the first petitioner passed away. Her legal representative has been impleaded as fifth respondent in the three appeals. During the pendency of the appeals, the first respondent also died. His legal representatives have been impleaded as additional respondents 6 and 7 in the appeals.

15. Heard: Sri. K.C Santhosh Kumar, the learned counsel appearing for the appellants; Sri.Rajan P.Kaliyath, the learned counsel appearing for the third respondent and Sri.P.G Ganappan, the learned counsel appearing for the fourth respondent.

16. Sri.Santhosh Kumar argued that the finding of the contributory negligence attributed against Madhavan is patently erroneous. Even though the third respondent had produced the final report, the same has been discredited by PWs 1 and 2, who were eye-witnesses to the accident. Moreover, the respondents

have not let in any evidence to controvert the pleadings and materials on record. Therefore, the finding of contributory negligence has to be set aside. He also contended that the Tribunal has failed to award reasonable and just compensation, including future prospects and compensation under the conventional/traditional heads to the appellants and, also, the multiplier of '11' adopted in the case pertaining to the death of Madhavan is wrong. Hence, the appellants are entitled to enhancement of compensation in all the appeals.

17. Sri.Rajan P.Kaliyath assiduously defended the common award. He argued that the finding of contributory negligence against Madhavan was justifiable as Ext.B1 charge-sheet was laid against him. He supported the finding of the Tribunal that the oral testimonies of PWs 1 and 2 were interested because they were the beneficiaries of the award and, therefore, Ext.B1 charge-sheet has overridden their testimonies. He also submitted that the Tribunal has awarded

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reasonable and just compensation under all heads in all the claim petitions and there are no grounds to enhance the compensation. He also defended the multiplier of '11' adopted by the Tribunal in O.P (MV) No.1056/2002 for the reason that Madhavan had crossed the age of 50 years. He submitted that all the appeals be dismissed.

18. The points that emanate for consideration in the appeals are:

- (i) whether the finding of the contributory negligence attributed against Madhavan is sustainable in law.
- (ii) whether the multiplier of 11 adopted by the Tribunal in O.P (MV) No.1056/2002 is correct or not
- (iii) whether the quantum of compensation fixed in O.P (MV) No.1056/2002 is reasonable and just.
- (iv) whether the quantum of compensation fixed in O.P (MV) No.1057/2002 is reasonable and just,
and
- (v) whether the quantum of compensation fixed in O.P (MV) No.1055/2002 is reasonable and just.

Point No.(i)

19. The definite case of petitioners is that the accident occurred due to the negligence of the first respondent, who drove the van at dangerous speed and without observing the traffic rules. They have asserted that if the first respondent had exercised due care and

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caution, the accident could have been averted. In order to substantiate their pleading, the petitioners 2 and 3 – PWs.1 and 2 – have testified that as the car was moving uphill, the van came downhill at breakneck speed and hit on the right side of the car. The petitioners have produced Ext.A1 FIR registered by the Kumta Police in crime No.110/2001 to prove their point.

20. On the contrary, the third respondent has pleaded that the accident happened due to the negligence of Madhavan - who attempted to overtake a rickshaw while moving uphill. The third respondent has produced Ext.B1 charge-sheet to support its contention.

21. The Tribunal after rejecting the oral testimonies of PWs 1 and 2, on the ground that they were interested witnesses, accepted Ext.A1 First Information Report without corroboration, and concluded that the accident occurred due to the negligence of the drivers of both the vehicles.

22. In **National Insurance Company Ltd v. Chamundeswari and others [(2021 SCC Online SC**

489] the Honourable Supreme Court has declared that if any evidence which is recorded before the Tribunal runs contrary to the contents in the First Information Report, there is no reason to give weightage to the contents in the First Information Report.

23. In **New India Assurance Co.Ltd v. Pazhaniammal - [(2011) (3) KLT 648]**, a Division Bench of this Court has held, as a general rule, the production of the charge-sheet is prima facie sufficient evidence of negligence for the purpose of a claim under Sec.166 of the Act. It is laid down that, the charge-sheet can be accepted as evidence of negligence against the accused driver. If any party disputes the charge-sheet, the burden is on such party to adduce oral evidence and discredit the charge-sheet.

24. Again in **Sampath M.P and others vs Binu and others [2020 KHC 444]**, this Court has held, if the Tribunal feels that the charge-sheet does not satisfy its judicial conscience, then the Tribunal can record its reasons and call upon the parties to let in oral evidence.

25. It is a fact that, the third respondent has produced Ext.B1 charge-sheet, wherein, the Police have found that the accident occurred due to the negligence of the drivers of both the vehicles.

26. I have meticulously evaluated Ext.B1 charge-sheet, which is claimed to be the English translation of the charge sheet without the original annexed. The Police have stated that the drivers of both the vehicles were negligent in causing the accident. How the Police arrived at the conclusion is not made out from Ext.B1. Ten witnesses have been named in the charge sheet, but the relevant supporting materials, i.e., the statements of the witnesses, AMVI reports, the scene mahazars or the vehicle mahazars have not been appended to the charge-sheet.

27. Conversely, PWs.1 and 2, who were eye witnesses to accident, have deposed that the accident happened due to the negligence of the first respondent who came downhill at high speed and hit on the right side of the car which was moving uphill. The above

testimony is more probable because the van was coming downhill and there is extensive damage on the right side of car, as evidenced from Ext.A21 survey report. Additionally, it is to be remembered, the respondents 1 and 2 have not contested the claim petitions, and the third respondent has not let in oral evidence to corroborate its bare assertion in the counter statements that the accident happened due to the negligence of Madhavan. The third respondent has also not examined any of the so-called eye witness mentioned in Ext.B1 charge sheet. The upshot of the above discussion leads me to the irresistible conclusion that there is a ring of truth in the testimonies of PWs 1 to 3 and the materials corroborated by them. In view of the credence given to the oral testimonies of the above witnesses, Ext B1 charge-sheet has fallen into a pale of insignificance.

28. *A Fortiori*, it is trite, a claim petition under Sec.166 of the Act has to be decided on the touchstone of preponderance of probability and not on the litmus test of beyond reasonable doubt.

29. On the basis of the overwhelming evidence in favour of the petitioners and viewed in the above compass, I am of the definite view that the finding attributing negligence on Madhavan is erroneous and wrong. Therefore, I set aside the finding and hold that the accident happened due to the negligence of the first respondent.

30. Since the third respondent has admitted the insurance policy and has not proved that the second respondent had violated the insurance policy conditions, the third respondent is to indemnify the liability of the second respondent arising out of the accident. Consequently, the third respondent is liable to pay the compensation amounts as per the impugned common award as well as the enhanced compensation, if any, to be determined herein below. Thus, I answer point No.(i) in favour of the appellants.

Point No.(ii)

31. After divergent views expressed by several Courts, regarding the selection of the multiplier in a

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claim petition filed under Section 166 of the Act, the Honourable Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another [(2009) 6 SCC 121]**, affirmed by a three Judge in **Reshma Kumari and others v. Madan Mohan and another [(2013) 9 SCC 65]** and approved by a Constitutional Bench in **National Insurance Company Limited v. Pranay Sethi and others [(2017) 16 SCC 680]**, has finally laid down the multiplier to be adopted of the deceased/injured person(s) falling in age group of 16 to 66 and above, which reads as follows:

Multiplier

<u>Age groups of the deceased/injured</u>	<u>Multiplier to be adopted</u>
16 – 20	: 18
21 – 25	: 18
26 – 30	: 17
31 – 35	: 16
36 - 40	: 15
41 – 45	: 14
46 – 50	: 13
51 – 55	: 11
56 – 60	: 9
61 – 65	: 7

32. Madhavan was born on 1.7.1951, as evident from Ext A11. On the date of the accident, viz., 8.7.2001, Madhavan had completed 50 years and 7 days.

33. Sri.Rajan P.Kaliyath argued that since Madhavan had completed the age of 50 years and was running 51, the multiplier of '11' adopted by the Tribunal is correct. He also contended that, if the above interpretation is not followed, there would be a vacuum in the age group between 50 – 51 years. The argument may sound attractive at the first blush, but is hard to be accepted for the following reasons.

34. In Sarla Verma the Honourable Supreme Court has finalised the multiplier to followed, by segregating persons falling in the age group of 16 to 66 into eleven categories, as in the table extracted above.

35. It is settled in **Amrit Bhanu Shali and others v. National Insurance Company Limited and others [(2012) 11 SCC 738]** and a host of other precedents

that, it is the age of the deceased/injured which is the quintessence to select the multiplier.

36. In **Shashikala and others v. Gangalakshamma and another [(2015) 9 SCC 150]** the Honourable Supreme Court while selecting the multiplier of the deceased who had completed the age of 45 years, held as follows:

“17. In so far as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained.”

37. A reading of the table in Sarla Verma leaves no room for any speculation that it is only when the deceased/injured completes the age of 51 years, the multiplier would shift from '13' to '11' and not when the deceased/injured attains the age of 50 years and runs the said age till the previous night of his 51st birthday. (Read the interpretation given by the Honourable Supreme Court in Prabhu Dayal Sesma vs. State of

Rajasthan and others [(1986) 4 SCC 69 on the Indian Majority Act, 1875 and this Court in Jaison V.George vs. State of Kerala [2019 (5) KHC 115] on the Juvenile Justice (Care and Protection of Children) Act, 2005, while computing the age of a person). In other words, the sine qua non to select the multiplier is the attainment of the specified age mentioned in the table and not the running of the age into the next group. It is also apposite to note, in **Pranay Sethi**, the age for awarding future prospects is segregated into three groups i.e., 16 – 39, 40 – 49 and 50 – 59. Therefore, if the argument of the learned Counsel for the Insurer is to be accepted, the same vacuum would also arise at the ages of 25, 30, 35, 40, 50, 55, 60 and 65 in selecting the multiplier and the ages of 39, 49 and 59 for awarding future prospects. This Court is bound to follow the law declared by the Honourable Supreme Court as enshrined under Article 141 of the Constitution of India and not to give a different interpretation or tinker with the well settled enunciation.

38. In the light of the above discussion and as Madhavan had only completed 50 years and 7 days, and had not attained the age of 51 years, the relevant multiplier to be selected is '13' and not '11' as wrongly applied by the Tribunal. Hence, I set aside the finding of the Tribunal in this regard, and adopt the multiplier of '13' in O.P (MV) No.1056/2002. Accordingly, I answer point No.(ii) in favour of the appellants.

Point No.(iii)

Income

39. The petitioners have pleaded that Madhavan was an Engineer by profession and drawing a monthly income of Rs.25,000/-. To prove their case, they have produced Ext.A8 series income tax acknowledgment forms for the assessment years - 1998-1999 and 1999-2000. As per Ext.A8 series, Madhavan had an annual income of Rs.1,10,298/- and Rs.1,16,310/- for the above assessment years. The Tribunal, based on Ext.A.8 series, fixed the monthly income of the deceased at Rs.10,000/-. There is no other material to prove that

Madhavan was earning more than Rs.10,000/- per month. Hence, I confirm the finding that Madhavan had earned an income of Rs.10,000 per month.

Multiplier

40. In view of the findings on point No.(ii), '13' is the correct multiplier to be applied.

Personal living expenses of Madhavan

41. The petitioners were the mother, wife and daughter of Madhavan, who are three in number. Following the principles in **Sarla Verma** and **Pranay Sethi (supra)**, one - third of the compensation for loss of dependency has to be deducted towards the personal living expenses of Madhavan.

Future prospects

42. In the light of the law laid down in **Sarla Verma** and **Pranay Sethi (supra)**, and considering the fact that Madhavan was aged 50 years at the time of his death, the petitioners are entitled to future prospects @ 10%.

Loss due to dependency

43. Taking into consideration the above mentioned factors, namely, the monthly income of Madhavan at Rs.10,000/-, the multiplier at '13', future prospects @ 10% and after deducting one-third of the compensation towards the personal living expenses of Madhavan, I refix the compensation for loss of dependency at **Rs.11,44,000/-**, instead of Rs.8,80,000/- awarded by the Tribunal.

Conventional/Traditional heads of compensation

44. In paragraph 59.8 of **Pranay Sethi (supra)** it is held that the dependents of the deceased are entitled for compensation under the conventional heads viz., 'funeral expenses', 'loss of estate' and 'loss of consortium' at Rs.15,000/-, Rs.15,000/- and Rs.40,000/- per dependent, respectively. It is further held that the above amounts have to be enhanced by 10% every three years.

45. In **N.Jayasree vs. Cholamandalam M.S, General Insurance Co Ltd. [2021 SCC Online SC**

967] and **Rasmita Biswal and others vs. The Divisional Manager, National Insurance Co., Ltd and another [2021 SCC Online SC 1193]**, the Hon'ble Supreme Court, for the accidents that happened in the years 2011 and 2013, respectively, has granted 10% escalation on the conventional heads, irrespective of the dates of the accident. Thus, it is to be construed and inferred that the 10 % escalation is to be granted every three years from the date of pronouncement of the judgment in **Pranay Sethi** (supra), which was rendered on 31.10.2017, and not for accidents that occur every three years after 31.10.2017. Thus, the dependents of the deceased are, after 31.10.2020, entitled to amounts of Rs.16,500/- each under the heads 'funeral expenses' and 'loss of estate', and Rs.44,000/- under the head 'loss of consortium'.

46. In the instant case, the Tribunal has awarded an amount of Rs.2,000/- towards 'funeral expenses', Rs.2,500/- towards 'loss of estate' and Rs.15,000/- towards 'loss of consortium'. Therefore, I award the

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appellants a further amount of Rs.14,500/- towards 'funeral expenses', a further amount of Rs.14,000/- towards 'loss of estate' and a further amount of Rs.73,000/- towards 'loss of consortium'.

Loss of love and affection

47. The Tribunal has awarded an amount of Rs.10,000/- under the head 'loss of love and affection'.

In **New India Assurance Co. v. Somwati and others [(2020) 9 SCC 644]** the Honourable Supreme Court has held that once compensation is awarded under the head 'loss of consortium', no amount shall be awarded under the head 'loss of love and affection', as it would amount to duplication of compensation. Therefore, I set aside the amount of Rs.10,000/- awarded under the head 'loss of love and affection'.

Pain and sufferings

48. The Tribunal has awarded an amount of Rs.5,000/- under the head 'pain and sufferings' to the petitioners.

49. In paragraph 19 of **Sarla Varma** (supra), the Honourable Supreme Court has held that no amount shall be awarded to the dependents of the deceased under the head 'pain and sufferings' in the case of instantaneous death. The said view has been reiterated in **United India Insurance Co. Ltd v. Satinder Kaur @ Satwinder Kaur and others- I ((2020) SCC Online 410]**. Hence, I set aside the amount of Rs.5,000/- awarded under the head 'pain and sufferings' as Madhavan had died immediately after the accident.

Other heads of compensation

50. With respect to the compensation awarded under the head transportation expenses, I find the same to be reasonable and just compensation.

51. On a comprehensive re-appreciation of the pleadings, materials on record and the law referred to in the afore-cited precedents, I hold that the appellants/petitioners 2 and 3 are entitled for enhancement of compensation as modified and re-

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calculated above, and given in the table below for easy reference.

SI. No	Head of claim	Amount awarded by the Tribunal (in rupees)	Amounts modified and recalculated by this Court
1	Transport to hospital	5,000/-	5,000/-
2	Funeral expenses	2,000/-	16,500/-
3	Loss of consortium	15,000/-	88,000/-
4	Loss of estate	2,500/-	16,500/-
5	Loss of love and affection	10,000/-	Nil
6	Loss of dependency	8,80,000/-	11,44,000/-
7	Pain and suffering	5,000/-	Nil
	Total	9,19,500/-	12,70,000/-

52. In the result, point No.(iii) is answered in favour of the appellants, by awarding them a further amount of **Rs.3,50,500/-** with interest and cost as ordered in the operative portion of this judgment.

Point No.(iv)

53. The second petitioner has averred that Latha was an 18 year old student. She has claimed an amount of Rs.3,00,000/- as compensation. The Tribunal, after fixing the monthly income of Latha on a notional basis at Rs.1,500/- and adopting the multiplier of 15, has awarded an amount of Rs.1,80,000/- towards

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compensation for loss of dependency and awarded a further amount of Rs.9,500/- under the heads, 'funeral expenses', 'loss of estate' and 'pain and sufferings', totalling to an amount of Rs.1,90,000/-.

54. In **Kuruvan Ansari vs. Shyam Kishore Murmu and another [2021 SCC Online SC 1060]**, the Honourable Supreme Court, following its earlier decision in **Kishan Gopal and another v. Lala and others - [(2014) 1 SCC 244]**, has fixed the notional income of a ten year old child at Rs.30,000/- per annum and adopted the multiplier of 15.

55. Latha was born on 15.12.1983. She was 17 years of age at the time of her death. Therefore, I am of the view that the principles in **Kuruvan Ansari** and **Kishan Gopal** (supra) have to be applied to the present case. Accordingly, I fix the income of Latha notionally at Rs.30,000/- per annum and adopt the multiplier of 15, which works out to Rs.4,50,000/-. Likewise, I award the appellant/second petitioner compensation under the conventional heads following the same principles in

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Pranay Sethi, N.Jayasree and Rasmita Biswal (supra) as discussed in point No.(iii) and award her a further amount of Rs.14,500/- towards 'funeral expenses', Rs,14,000/- towards 'loss of estate' and Rs.44,000/- towards 'loss of consortium'.

56. Again as discussed above, I set aside the amount of Rs.5,000/- awarded under the head 'pain and sufferings'.

57. Accordingly, I answer point No.(iv) in favour of the appellant/second petitioner by enhancing the compensation as modified and recalculated above and given in the table below for easy reference.

SI. No	Head of claim	Amount awarded by the Tribunal (in rupees)	Amounts modified and recalculated by this Court (in rupees)
1	Funeral expenses	2,000/-	16,500/-
2	Loss of consortium	Nil	44,000/-
3	Loss of estate	2,500/-	16,500/-
4	Loss of dependency	1,80,000/-	4,50,000/-
5	Pain and suffering	5,000/-	Nil
	Total	1,89,500/- rounded off to Rs.1,90,000/-	5,27,000/-

58. Albeit the appellant/second petitioner claiming an amount of Rs.3,00,000/- as compensation, following

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the ratio decidendi in **Kuruvan Ansari** and **Kishan Gopal** (supra) and **Sarla Verma** and **Pranay Sethi** (supra), I have awarded more compensation than what is claimed in the claim petition. The said course is admissible in the light of the law laid down in **Nagappa vs. Gurudayal Singh [2003 (1) KLT 115(SC)** and **Rajesh vs. Rajbir Singh [2013 (3) KLT 89 (SC)]**.

59. In the result, point No.(iv) is answered in favour of the appellant/second petitioner by holding that she is entitled to a further amount of **Rs.3,37,000/-** with interest and cost as ordered in the operative portion of this judgment.

Point No.(v)

60. The petitioners have claimed an amount of Rs.60,000/- as damages to the car. They have examined PW3 to prove Ext A21 survey report. The Tribunal, based on the survey report, awarded an amount of Rs.48,000/-, but deducted 50% towards contributory negligence of Madhavan, and granted an amount of Rs.24,000/-.

61. On-going through Ext A21, it is seen that PW3 has assessed the net liability of the insurer at Rs.48,000/-. However, PW3 has also fixed the salvage value at Rs.3,000/-, which was not taken note by the Tribunal. Therefore, the appellants are only entitled to Rs.45,000/- as per Ext A21. As the petitioners themselves have relied on Ext A21 survey report, they cannot aspire for any amount more than what is fixed in Ext A21. Hence, I hold that the appellants are entitled to a total amount of Rs.45,000/-, after setting aside the finding of contributory negligence, with interest and cost as mentioned in the operative portion of the judgment. Accordingly, I answer question No.(v) in favour of the appellants.

In the result, the appeals are allowed in the following manner:

- (i) MACA No.2481 of 2008 (O.P.(MV) No.1056/2002) is allowed by permitting the appellants to recover from the third respondent an amount of Rs.4,59,750/- (viz.,50% of the amount that was deducted towards contributory negligence) and Rs.3,50,500/- the enhanced compensation, totalling to an amount of

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Rs.8,10,250/- (Rupees Eight Lakh Ten Thousand Two Hundred and Fifty only), with interest on the total amount at the rate of 7% per annum from the date of petition till the date of realisation and proportionate cost.

(ii) MACA No.2483 of 2008 (O.P.(MV) No.1057/2002) is allowed by permitting the appellants to recover from the third respondent an amount of Rs.95,000/- (viz.,50% of the amount that was deducted towards contributory negligence) and Rs.3,37,000/- the enhanced compensation, totalling to an amount of Rs.4,32,000/- (Rupees Four Lakh Thirty Two Thousand only), with interest on the total amount at the rate of 7% per annum from the date of petition till the date of realisation and proportionate cost.

(iii) MACA No.2476 of 2008 (O.P.(MV) No.1055/2002) is allowed by permitting the appellants to recover from the third respondent an amount of Rs.45,000/- (Rupees Forty Five Thousand only), with interest at the rate of 7% per annum on the said amount from the date of petition till the date of realisation and proportionate cost.

(iv) The third respondent is ordered to deposit the compensation amount as ordered in the three appeals before the Tribunal, within sixty days from the date of receipt of the certified copies of the judgments.

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(v) Immediately on the compensation amounts being deposited, the Tribunal shall disburse the deposited amount totally to the appellant in MACA No.2483 of 2008 and in equal shares to the appellants in MACA Nos.2476 and 2481 of 2008.

sd/-

sks/18.1.2022

C.S.DIAS, JUDGE